

November 13, 1998

**AMENDED ORDER  
No. BT- 0612-94-02**

Randolph S. Perry  
Bodman, Longley & Dahling LLP  
34<sup>th</sup> Floor, 100 Renaissance Center  
Detroit, Michigan 48243

Dear Mr. Perry:

By letter dated August 13, 1998, you have asked, as counsel for Merrill Lynch Trust Bank of Michigan, that the Commissioner of the Financial Institutions Bureau:

- 1) Approve an extension of the period for which the bank is organized and that the extension be for a perpetual term; and
- 2) Waive the need for further compliance with conditions 6, 15, and 16 of the Order approving the application to establish the bank.

The Conditions of the Order are presented in the following sequence: the original language, the amended language presented in italics, and the explanation for the change:

1. The initial period for which this bank may be organized is three years from date of filing of the bank's Articles of Incorporation. The bank's Articles of Incorporation shall indicate that the bank's activities will be limited to the exercise of trust powers only. The Articles shall also require the bank to comply with applicable Federal Deposit Insurance Corporation Law and Regulations, as if it were a federally insured nonmember bank. Upon the written request of the bank, submitted at least four weeks prior to the expiration date of its corporate term, the commissioner may approve an extension of the period for which the bank is organized;

*The bank's charter is issued in perpetuity. The bank's Articles of Incorporation shall indicate that the bank's activities will be limited to the exercise of trust powers only. The Articles shall also require the bank to comply with applicable Federal Deposit Insurance Corporation Law and Regulations, as if it were a federally insured nonmember bank;*

Condition 1 is modified to extend the bank's charter in perpetuity. It will be necessary to amend the Articles of Incorporation to effect the change. This modification recognizes the performance of the bank and its compliance with the Conditions of the Order.

2. Any change in executive management, the directorate, or ownership of the bank's stock, shall require the prior written approval of the Commissioner of the Financial Institutions Bureau;

*Any change in the ownership of the bank's stock shall require the prior written approval of the Commissioner of the Financial Institutions Bureau;*

Condition 2 no longer requires the approval of the Commissioner to change executive management or the directorate. This change parallels an amendment to federal law wherein the requirement for federal approval of additions to a de novo bank's board of directors or to its executive management in its first three years of operation was eliminated.

4. The bank shall **maintain** minimum equity capital of not less than \$2,000,000, additional equity capital in an amount equivalent to one-fourth of one percent (0.25%) of total trust assets under management, and any additional capital deemed necessary based upon the Bureau's overall risk profile of the bank;

*The bank shall **maintain** minimum equity capital of not less than \$2,000,000, additional equity capital in an amount equivalent to one-fourth of one percent (0.25%) of discretionary trust assets as that term is defined on the annual Report of Trust Assets, and any additional capital deemed necessary by the Bureau based upon the overall risk profile of the bank. Compliance with the additional capital clause shall be determined based upon December 31<sup>st</sup> data as reported on the bank's Annual Report of Trust Assets;*

Condition 4 is modified to clarify the additional capital requirement by applying it to discretionary trust assets as defined on the Annual Report of Trust Assets and establishing the date of the calculation. This action was taken to make it consistent with Bureau practice and policy.

6. The bank shall not utilize the services of any affiliate of its parent Merrill Lynch & Co., Inc., nor purchase for its fiduciary trust accounts shares of Merrill Lynch mutual funds, **unless specifically authorized** by the trust instrument, agreement, or court order;

*The bank shall not utilize the services of any affiliate of its parent Merrill Lynch & Co., Inc., **unless specifically authorized** by the trust instrument, agreement, or court order. Notwithstanding the limitations contained in this condition, the bank may invest funds consistent with the provisions of section 185 of Michigan's banking code of 1969, as amended;*

Condition 6 is clarified to allow for investment in proprietary mutual funds. The Commissioner will consider further relief from the Condition provided the bank can show it is competitively disadvantaged and what institutions have been given an advantage over the bank.

15. The bank shall file, at least annually, a comparative cost analysis or market study report which demonstrates that the bank has clearly satisfied its fiduciary obligation to provide best execution of securities trades for its trust accounts;

*The bank shall maintain files that demonstrate that the bank has clearly satisfied its fiduciary obligation to provide best execution of securities trades for its trust accounts;*

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Condition 15 no longer requires a cost analysis or market study. However, the Bureau expects that trades for managed accounts will receive at least a 40% discount from a published rate schedule rather than a 40% discount from the regular rate charged by affiliate MLPF&S as represented in the application.

16. The bank shall comply with the Community Reinvestment Act of 1977, as amended, 12 USC 2901 [Title 12, U.S. Code, Section 2901], and shall file at least annually, an action report which details the bank's investments, activities, and/or other means by which it is complying with the statute. A copy of the FFIEC Interagency Questions and Answers Regarding Community Reinvestment is enclosed for your review;

*Condition 16 is eliminated.*

The Community Reinvestment Act was amended to eliminate its application to limited purpose banks.

DEPARTMENT OF CONSUMER AND  
INDUSTRY SERVICES

FINANCIAL INSTITUTIONS BUREAU

Gary K. Mielock  
Chief Deputy Commissioner